

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CLARENCE M. EMERSON, III, and)
AUDRA EMERSON,)

Plaintiffs,)

v.)

PETTINARO CONSTRUCTION CO.,)
INC., VENTRESCA CONSTRUCTION)
CO.)

Defendants, and)

C.A. No. 04C-07-202-PLA

CARTEE, INC. d/b/a CAPITOL)
CONSTRUCTION CO.,)

Defendant/Third-Party)
Plaintiff,)

v.)

BRUCE LEE (a/k/a Hyun Chan Lee) t/a)
BRUCE LEE HOME IMPROVEMENTS)
and/or YU JIN CONTRACTORS,)

Third-Party Defendant.)

Submitted: February 6, 2007

Decided: February 12, 2007

UPON THIRD-PARTY DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT.
DENIED.

This 12th day of February, 2007, upon consideration of the motion for summary judgment filed by third-party defendant Bruce Lee (a/k/a Hyun Chan Lee) t/a Bruce Lee Home Improvements and/or Yu Jin Contractors (“Lee”), it appears to the Court that:

1. Clarence Emerson, III, a subcontractor for defendant Ventresca Construction Co. (“Ventresca”), was injured by a collapsing staircase while performing work at Bethany Bay Condominiums (“BBC”). As a result of that accident, Mr. Emerson and Audra Emerson, his wife, (collectively “Plaintiffs”) filed this action against the general contractor for the BBC project, Pettinaro Construction Co., Inc. (“Pettinaro”), and two of the subcontractors, Ventresca and Cartee, Inc. d/b/a Capitol Construction Co. (“Cartee”). Lee was brought into this case via a third-party complaint filed by Cartee.¹

2. Cartee initially installed the staircase which caused injury to Mr. Emerson. In its third-party complaint, Cartee alleges that Lee removed and reinstalled the staircase, after it had originally been installed by Cartee and just prior to Mr. Emerson’s accident, so that Lee could perform its work of installing the siding on the condominium. Lee counters by contending

¹ See Docket 1, 46, 77, 81.

that there is no evidence that it removed the staircase and, therefore, it has filed the motion for summary judgment now before the Court.²

3. When considering a motion for summary judgment, the Court's function is to examine the record to ascertain whether genuine issues of material fact exist and determine whether a party is entitled to judgment as a matter of law. Summary judgment will not be granted if, after viewing the record in a light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate. If, however, there are no material facts in dispute, and the moving party is entitled to judgment as a matter of law, summary judgment will be granted.³

4. The moving party bears the initial burden of demonstrating that the undisputed facts support its legal claims. Should the moving party make such a showing, the burden shifts to the non-moving party to demonstrate that genuine issues of material fact exist.⁴

5. After viewing the record in a light most favorable to Cartee, there is a material fact that remains in dispute. Cartee points to several facts

² See Docket 77, ¶¶ 2, 9.

³ See SUPER. CT. CIV. R. 56; *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. Ct. 2005); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973); *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁴ See *Storm*, 898 A.2d at 879-880; *Urena v. Capano Homes, Inc.*, 901 A.2d 145, 150 (Del. Super. Ct. 2006).

in the record contrary to Lee's averment that it did not in any way tamper with the staircase. Specifically, Cartee cites to the testimony of Wes Sanders, the superintendent from Cartee at the BBC project, who testified that after this accident occurred, he inspected the staircase and it appeared to him that someone had removed and "stripped" one of the screws inserted to hold the staircase in place. Mr. Sanders also testified that a photo of the staircase taken after the accident showed different marks in the wood consistent with the removal and reinstallation of the screws supporting the staircase. Cartee also refers to the testimony of Thomas Wohlar, the general superintendent for Pettinaro at BBC, who testified that Lee removed staircases in other buildings when performing its work on the project.⁵ While these facts do not necessarily prove that Lee tampered with the staircase, they are certainly enough to survive summary judgment.

6. Accordingly, Lee's Motion for Summary Judgment is **DENIED.**

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

⁵ See Docket 81, ¶¶ 6, 7, 11.